

TEMPORARY SERVICES TERM CONTRACT SPB05-1007P-F

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 N Roberts, PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Workplace, Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 81-0503098, 1310 South Main Street, Kalispell MT 59901, and (406) 755-4884.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect on November 1, 2008, and terminate on October 31, 2009, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of two additional years. This renewal is dependent upon legislative appropriations.

3. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

4. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

5. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following temporary worker services.

Various state agencies utilize the services of private companies to provide temporary workers as needed. These individuals provide a variety of clerical, data entry, and word processing services on a temporary basis.

Temporary service contracts are needed to perform services in eight cities around the State. Those cities are: Billings, Butte, Bozeman, Great Falls, Helena, Kalispell, Miles City and Missoula. This contract will provide services to the greater Kalispell area: Kalispell, Whitefish, Columbia Falls, Somers, Bigfork, and Lakeside.

Temporary workers will be assigned various tasks with the majority of work to be general clerical duties. The specific types of workers for this contract are - limited experience clerical, experienced clerical, and advanced software specialist.

The State of Montana is committed to fair employment opportunities. State job openings and application materials are available on the State's website and at Montana Job Services offices. All interested persons are invited and encouraged to apply for jobs with the State, regardless of their current employment status. Therefore the State will not pay any "finders fees", "transfer charges", "conversion charges", or any other fees or charges related to the hire of a person who has worked for or is currently working for a temporary services provider.

5.1 Temporary Service Provider. The Contractor must be a temporary service offeror as defined in 39-71-116(33) MCA. The temporary worker shall be an employee of the Contractor, not an employee of the State of Montana, (Ref. 39-71-116(35) MCA). The Contractor must have a fully functional office open during regular business days, minimum of Monday through Friday, 8 a.m. to 5 p.m., to provide the support necessary for performance of the services required.

5.2 Skilled Workers. The Contractor shall provide workers who possess the skills and abilities necessary to successfully complete the duties assigned by the State.

5.3 Work Schedules. The temporary worker may be required to work up to eight hours each day. On rare occasions, the worker may be required to work overtime, weekends, or holidays, rates for these times will be negotiated with the Contractor.

5.4 Length of Assignment. Temporary workers shall be provided to the requesting agency/department for a maximum of three months or 480 hours, as required. (State agencies should utilize the modified FTE process for temporary employment requiring longer terms.)

5.5 Payroll and Accounting Responsibilities. The Contractor shall retain the responsibility for payroll and accounting for all required withholding for the temporary worker(s), including, but not limited to:

- ✓ Federal, state and social security taxes;
- ✓ Federal and state unemployment insurance;
- ✓ Worker's compensation;
- ✓ All monthly, quarterly, and annual government and insurance reports;
- ✓ Calculate, print, and distribute employee's W-2 forms; and
- ✓ Mandatory child support deductions.

5.6 Invoicing. Upon submission of verification of hours worked by the temporary worker(s), the Contractor shall invoice the designated agency at regular intervals for payment of contracted services rendered. The Contractor will only be reimbursed for actual hours worked by their employee. Each using agency will be responsible for payment of services rendered, invoices must be sent directly to the agency requesting the worker(s).

5.7 Unsatisfactory Workers. The State retains the right to refuse any unsatisfactory worker and the Contractor shall guarantee a satisfactory replacement at no additional charge to the State. The Contractor must provide a replacement worker within one working day of notification.

The State shall have the right to immediately release a temporary worker unable to satisfactorily perform assigned duties or whose behavior is unacceptable, rude, harassing or threatening at any time. The Contractor shall replace that worker for the duration of the work assignment. In the event a worker is removed prior to completion of the scheduled work shift, the Contractor will be reimbursed for actual hours of satisfactory work performance. No charge for removal/replacement will be paid.

5.8 Rules and Policies. The Contractor will be informed of the rules and policies of the State agencies and provide workers who are familiar with and can comply with them. The State may require the Contractor to have a background investigation initiated or completed prior to placement of temporary worker(s). This investigation should include but is not limited to:

- ✓ Fingerprint I.D. Check
- ✓ Active past employer reference check.
- ✓ Past residence history.

Files shall be maintained regarding these investigations. The State may conduct inspections of these background investigations to ensure compliance and appropriateness of hire.

The State expects that the contractors are conducting background checks on their employees' past education, experience, and work history as a normal course of business, and will not pay additional costs for these services. However, the State recognizes that there may be additional costs incurred for fingerprint ID checks or extraordinary background/residence history, and will pay for actual costs incurred for these types of background investigations, when requested.

The Contractor shall inform the worker(s) that the State does not pay for parking expenses.

5.9 TANF. The State is actively involved in welfare reform and encourages the contractor to hire participants in the Temporary Assistance for Needy Families (TANF) program.

5.10 Agency Liaison. Each agency will designate a liaison(s) to be responsible for the request and authorization of temporary services. The liaison will attempt to provide 24 hours notice prior to requiring services. However, on occasion the State may require immediate placement. If immediate placement is not available, the State reserves the right to procure services from another temporary service contractor.

5.11 Equipment and Supplies. The individual agencies will supply temporary workers with data entry terminal, office equipment, supplies, and other similar and related items necessary to perform the assigned tasks.

5.12 Position Descriptions:

Limited Experience Clerical. An individual with less than 12 months of experience who can perform copying, filing, receptionist duties, may be required to do minimal typing, and has some office experience.

Experienced Clerical. An individual with one to two years of experience, has worked with modern copiers, telephone systems, has some experience with word processing software programs such as Word and WordPerfect, and some experience with spreadsheet software programs such as Excel and Lotus 1-2-3. This individual will perform data entry, some word processing and general clerical/receptionist duties, bookkeeping duties, and has at least one year of office experience. Data entry will include enter and transfer of data from existing databases, medical records, shipment invoices, quarterly reports, demographic reports, etc. It is mandatory that data entry made for confidential files remain confidential.

Advanced Software Specialist. An individual possessing the skills listed above with a minimum of two years of computer experience. Extensive knowledge in word processing software programs such as Word and WordPerfect, and spreadsheet software programs such as Excel and Lotus 1-2-3 needed. Some knowledge of PeopleSoft software would be helpful.

6. CONSIDERATION/PAYMENT

6.1 Payment Schedule. In consideration for the temporary worker services to be provided, the State shall pay according to the following schedule:

Kalispell:

| Position Title | Cost Per Hour |
|------------------------------|----------------------|
| Limited Experience Clerical | \$9.87 |
| Experienced Clerical | \$11.88 |
| Advanced Software Specialist | \$14.36 |

6.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

7. COST/PRICE ADJUSTMENTS

Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

8. PURCHASING CARD

The State of Montana has a Purchasing Card (GE MasterCard) Program in place that gives agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

9. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the name of the worker, position assigned, start and end dates for each assignment, total quantity of hours per assignment, total dollars expended, the State agency/department and the name of the agency contact person. The first report for this term contract will be due July 15, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

10. ACCESS AND RETENTION OF RECORDS

10.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

10.2 Retention Period. The Contractor agrees to create and retain records supporting the temporary worker services for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

11. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

12. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

13. REQUIRED INSURANCE

13.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

13.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

13.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

13.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

13.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

13.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

14. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135, upon expiration.

15. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

16. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

17. PATENT AND COPYRIGHT PROTECTION

17.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

17.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

18. CONTRACT TERMINATION

18.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

18.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

19. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Penny Moon will be the liaison for the State.
Room 165 Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529
E-mail: pmoon@state.mt.us

Lisa Kinsey will be the liaison for the Contractor.
1310 South Main Street
Kalispell MT 59901
Telephone #: (406) 755-4884
Fax #: (406) 257-6333
E-mail: bobd@workplaceinc.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

20. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

21. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

22. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

23. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

24. SCOPE, AMENDMENT AND INTERPRETATION

24.1 Contract. This contract consists of eight numbered pages, any Attachments as required, RFP # SPB05-1007P, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

This contract and any subsequent amendments is the sole contractual agreement between the parties and shall supercede all other agreements, either stated or implied, including but not limited to terms and conditions listed on timecards, worker request forms, assignment forms, client agreements, etc., for the entire term of the contract.

24.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

25. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135**

**WORKPLACE, INC.
1310 SOUTH MAIN STREET
KALISPELL MT 59901
FEDERAL ID # 81-0503098**

BY: Penny Moon, Contracts Officer

BY: Shelley Louterback, SPHR - President

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain

registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

CONTRACT AMENDMENT NO. 4
CONTRACT FOR TEMPORARY SERVICES
CONTRACT # SPB05-1007P-F

This CONTRACT AMENDMENT is to amend the above-referenced contract between the State of Montana, Department of Administration, State Procurement Bureau (STATE), located at Room 165 Mitchell Building, 125 N Roberts, PO Box 200135, Helena MT 59620-0135, and Workplace, Inc. (CONTRACTOR), located at 1310 South Main Street, Kalispell MT 59901, telephone number (406) 755-4884. This Contract is amended for the following purpose(s):

The Department of Public Health and Human Services may wish to use this contract for services involving handling of protected health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Prior to assigning these tasks to a temporary worker supplied by the Contractor, it is necessary to execute the attached Business Associate Agreement and incorporate it into this contract.

STATE OF MONTANA
STATE PROCUREMENT BUREAU

WORKPLACE, INC.
1310 SOUTH MAIN STREET
KALISPELL MT 59901
FEDERAL ID # 81-0503098

BY: _____
(Name, Title)

BY: _____
(Name, Title)

DATE: _____

DATE: _____

NOTE TO USER. THE PREFERRED FORMAT FOR A BUSINESS ASSOCIATE AGREEMENT IS TO INCLUDE THE BUSINESS ASSOCIATE AGREEMENT AS A PROVISION OF THE MAIN BODY OF THE CONTRACT. SEE SECTION 17 OF THE CONTRACT MANUAL.

Business Associate Agreement (the "Agreement") made this ____ of June, 2007, effective upon execution by and between the Montana Department of Public Health and Human Services (hereinafter "the Covered Entity") and Workplace, Inc. (hereinafter "the Business Associate.")

RECITALS:

- A. The Covered Entity and the Business Associate entered into Contract No SPB05-1007P-F (hereinafter "the Contract" or the "underlying Contract") for the purpose of providing temporary worker services.
- B. Pursuant to the Contract, Business Associate receives protected health information (defined below) from Covered Entity, that is subject to the provisions of the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA").
- C. Business Associate and Covered Entity mutually desire to comply with the applicable business associate provisions of the HIPAA privacy regulations (45 CFR Parts 160-164), the provisions of the standards for electronic transactions regulations (45 CFR parts 160 & 162) and the securities regulations, including the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164) for PHI (as defined herein under in Section 1.3) held or transferred by Covered Entity.
- D. As a term of the underlying Contract, Business Associate agrees to comply with all applicable state and federal laws. HIPAA is a federal law applicable to Business Associate and Covered Entity and without this Agreement; Covered Entity will not continue a business relationship with Business Associate.

IN CONSIDERATION OF THE ABOVE RECITALS and the mutual promises contained in this Agreement, Covered Entity and Business Associate enter into this Agreement.

1. Definitions--Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- 1.1. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.2. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.3. Protected Health Information. "Protected Health Information" (hereinafter "PHI") shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.4. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- 1.5. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.6. Security Rule. "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information.
- 1.7. Other terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule or Security Rule.

2. Obligations and Activities of Business Associate

- 2.1. Business Associate may use or disclose PHI received from Covered Entity solely to perform Business Associate's duties pursuant to the underlying contract. Business Associate will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law. Business Associate will not use or disclose PHI in any manner that could result in a violation of HIPAA or the HIPAA implementing regulations.
- 2.2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- 2.3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate concerning the use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

- 2.4. Business Associate agrees to report to Covered Entity as soon as it becomes aware of any use or disclosure of the PHI not provided for by this Agreement. This includes, but is not limited to promptly reporting to Covered Entity any security incident of which Business Associate becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the security incident, the scope of the security incident, the Contractor's response to the Security incident, and the identification of the party responsible for causing the security incident, if known.
- 2.5. Business Associate will ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
- 2.6. At the request of Covered Entity, Business Associate agrees to provide access, in a reasonable time and manner, to PHI in any Designated Record Set of Business Associate, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- 2.7. At the request of Covered Entity, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526.
- 2.8. Business Associate agrees to make internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, available in a reasonable time and manner to the Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.9. Business Associate agrees to document disclosures of PHI, and information related to such disclosures, as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 2.10. Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Sections 2.8 and 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3. **Permitted Uses and Disclosures by Business Associate**

3.1. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI solely to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Contract No. SPB05-1007P-F. Such use or disclosure may not violate the HIPAA regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j) (1).

4. **Obligations of Covered Entity**

4.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. A copy of Covered Entity's notice of privacy practices is attached.

4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. **Term and Termination**

5.1. Term. This Agreement shall be effective as of the date of the contract, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the provisions of HIPAA and its implementing regulations.

- 5.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall, in its sole discretion, either provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; Covered Entity will immediately terminate this Agreement and Contract No. SPB05-1007P-F. If Business Associate has breached a material term of this Agreement and neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- 5.3. Effect of Termination. Except as provided in paragraph 5.4 of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 5.4. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon Covered Entity's agreement, in its sole discretion, that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous

- 6.1. A reference in this Agreement to a section in the Privacy Rule or the Security Regulation means the section as in effect or as amended.
- 6.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Regulations and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 6.3. Survival. The respective rights and obligations of the Business Associate under Section 5.3 and 5.4 of this Agreement shall survive the termination of this Agreement.
- 6.4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

This agreement entered into on the _____ day of June, 2007.

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES (Covered Entity)

By: _____

Printed Name: _____

Title: Division Administrator

Address: _____

Telephone Number: _____

By: BUSINESS ASSOCIATE

Name: _____

By: _____

Printed Name: _____

Title: _____

Address: _____

Telephone Number: _____